IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Bail Appl..No. 7789 of 2007()

CRIME NO.717/07 OF PATHANAMTHITTA POLICE STATION

PETITIONERS/ACCUSED

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1. N.K.DIVAKARAN, S/O.KESAVAN,
   AGED 81 YEARS, MINI SADANAM,
   KANNAMKARA, PATHANAMTHITTA.

2. SAUDAMINI AMMA, W/O.N.K.DIVAKARAN,
   MINI SADANAM, KANNAMKARA, PATHANAMTHITTA.

BY ADV. SRI.C.S.MANILAL

RESPONDENTS:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/12/2007 ALONG WITH BA NO. 7798 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos.7789 & 7798 OF 2007

Dated this the 19th day of December, 2007

ORDER

These applications for anticipatory bail. Identical allegations are raised against the petitioners – spouses, in these crimes. It is alleged that they are guilty of the offences punishable, inter alia, under Secs.409 and 420 of the IPC. The gravamen of the allegations is that the petitioners in the name of one finance establishment by name `ESS EN Bankers' had received deposits from the gullible members of the public. They committed breach of the obligation to return the deposit amounts so received by them as promised by them at the time when the deposits were received. Altogether, there are three accused persons. Two separate private complaints were filed by the separate de facto complainants. One of the de facto complainants is none other than the brother of the 1st

petitioner. The private complaints were referred to the police by the learned Magistrate under Sec.156(3) of the Cr.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. I have heard the learned counsel for the petitioners, the learned Public Prosecutor as also the learned counsel who has intervened on behalf of the de facto complainant.

3. The learned counsel for the petitioners submits that the 1st petitioner has nothing to do with the establishment by name `ESS EN Bankers', except that his wife – the 2nd petitioner and her brother are partners of the said ESS EN Bankers. The learned counsel for the petitioners submits that a purely civil liability to return the amount is blown out of proportion to make it appear that it is a culpable criminal offence. That purposes not honest are prompting the brother of the 1st petitioner to raise such false allegations against the petitioners is evident, it is urged. In any view of the matter, the petitioners may not be forced to endure the undeserved trauma of arrest and detention, submits the learned counsel for the petitioners.

4. The learned Public Prosecutor opposes the application. But in reply to a pointed query put by this Court to explain the actual overt contumacious role played by the 2nd petitioner – a

woman, the learned Public Prosecutor submits that the 2nd petitioner can be granted anticipatory bail subject to appropriate terms and conditions. So far as the 1st accused/1st petitioner is concerned, it is not disputed that he is not the partner of the establishment by name `ESS EN Bankers'. The learned counsel for the de facto complainant submits that he is a former M.L.A. He has influence among the members of the local public. He was also instrumental in promoting the business of accepting the deposits by the ESS EN Bankers. This is the only allegation against the 1st petitioner. I am satisfied that subject to appropriate terms and conditions, anticipatory bail can be granted to both the petitioners.

5. In the result, these applications are allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 26/12/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each in each case with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m.

and 1 p.m. on 27/12/07 and 28/12/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months. Subsequently, they shall so make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 26/12/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 26/12/07.

Sd/-
(R. BASANT, JUDGE)

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//true copy// P.S. to Judge